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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

10 CR 228 (LTS)

5 IRWIN LIPKIN,

6 Defendant.

7 -----x

8 New York, N.Y.

9 August 5, 2015

2:07 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the

16 Southern District of New York

DAVID ABRAMOWICZ

17 PAUL MONTELEONI

Assistant United States Attorneys

18 RICHARD P. GALLER

19 Attorney for Defendant

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1 (In open court)

2 THE COURT: Good afternoon.

3 (Case called)

4 THE COURT: Counsel, appearances please.

5 MR. ABRAMOWICZ: Good afternoon, your Honor. David
6 Abramowicz and Paul Monteleoni for the government. We're
7 joined at counsel's table by special agent Paul Roberts of the
8 FBI.

9 THE COURT: Good afternoon Mr. Abramowicz,
10 Mr. Monteleoni, and Special Agent Roberts.

11 MR. GALLER: Hi, your Honor. Richard Galler for the
12 defendant.

13 THE COURT: Good afternoon, Mr. Galler. And good
14 afternoon, Mr. Lipkin.

15 DEFENDANT LIPKIN: Good afternoon.

16 THE COURT: I understand there's a member of
17 Mr. Lipkin's family here. Good afternoon.

18 MR. GALLER: Yes. His son is here, Mark.

19 THE COURT: Good afternoon to Mark Lipkin and also to
20 the spectators and members of the press who are present.

21 We are here today for sentencing. I have received and
22 reviewed the presentence investigation report which is dated
23 July 28, 2015, including the recommendation and addendum as
24 well as defense counsel's July 24, 2015 submission, which was
25 accompanied by two letters from family members in support of

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1 Mr. Lipkin, a physician's report concerning his medical
2 condition, a letter concerning a psychiatric examination, and a
3 letter from Mr. Lipkin himself.

4 I have also received and reviewed the government's
5 July 29, 2015 submission and a proposed consent order of
6 forfeiture which was executed earlier this month.

7 In addition, I have received a submission from the
8 victim witness coordinator under a cover letter dated July 27,
9 2015, which contained two victim impact statements, neither of
10 which mentions the defendant specifically.

11 I have also considered all of the Madoff Securities
12 victim impact statements that the Court has received in
13 connection with the earlier sentencings in this case.

14 Are there any other written submissions that the
15 parties intend me to have considered in connection with the
16 sentencing?

17 MR. ABRAMOWICZ: There are not, your Honor, but just
18 to clarify that the government submission was dated July 31.

19 THE COURT: Apologies. I misnoted the date. So it is
20 the July 31 submission.

21 MR. GALLER: Nothing else, your Honor.

22 THE COURT: Thank you.

23 Counsel may I just see you at the sidebar for a moment
24 concerning a filing.

25 (At the sidebar)

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1 THE COURT: So, Mr. Galler, my law clerk told me that
2 everything has been filed on ECF in your submission including
3 the medical reports, they're all on the open record. Is that
4 your intent?

5 MR. GALLER: Yes, it was my intent, probably should
6 have sent one or two things under seal but that's okay.

7 THE COURT: If you wanted to request that I withdraw
8 the full submission from ECF and permit you to file a redacted
9 version on ECF with the full version to be filed under seal in
10 order to protect the specific medical information and, for
11 instance, contact information for Mark Lipkin, I would
12 entertain such a request.

13 MR. GALLER: I think that would be the appropriate
14 thing, yes.

15 THE COURT: Then I will enter an order directing the
16 clerk to file under seal the current docket entry and will
17 expect that within the next 48 hours you'll send me another --
18 you'll file a redacted version and then I need another full
19 version for the filing under seal.

20 MR. GALLER: And file that how?

21 THE COURT: If you'd send it to the attention of
22 chambers, we'll --

23 MR. GALLER: Hard copy?

24 THE COURT: Yes. We'll file the hard copy under seal.

25 MR. GALLER: That's fine.

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1 THE COURT: Thank you very much.

2 MR. GALLER: Thank you, Judge.

3 (In open court)

4 THE COURT: Mr. Abramowicz, will you summarize the
5 government's victim notification activities in connection with
6 this proceeding.

7 MR. ABRAMOWICZ: Yes, your Honor. The government
8 effected victim notification; did not receive any notices from
9 victims expressing a desire to be heard today.

10 THE COURT: Thank you.

11 Mr. Galler, have you read the presentence report and
12 discussed it with Mr. Lipkin?

13 MR. GALLER: I have, your Honor.

14 THE COURT: And Mr. Lipkin, have you yourself reviewed
15 the presentence report?

16 DEFENDANT LIPKIN: Yes, I have, your Honor.

17 THE COURT: And have you discussed it with your
18 attorney?

19 DEFENDANT LIPKIN: Yes, your Honor.

20 THE COURT: Thank you.

21 I'd ask Mr. Monteleoni that you move one way or the
22 other so that -- thank you. Now I'm able to see Mr. Lipkin.

23 MR. GALLER: I'm sorry. Mr. Lipkin just can't stand.

24 THE COURT: I understand that. And he was having to
25 move at an angle to be able to see me so I just wanted to make

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1 sure that he can and thank you Mr. Monteleoni and Special Agent
2 Roberts. Sorry about the close quarters there with the chairs.

3 MR. MONTELEONI: My apologies for obstructing your
4 view.

5 THE COURT: All right. We'll all in good shape now.

6 So Mr. Galler do you have any objections or other
7 issues with respect to the content of the presentence report
8 that you'd like to address at this time?

9 MR. GALLER: I do not, your Honor.

10 THE COURT: Thank you.

11 Mr. Abramowicz, does the government have any
12 objections or other issues with respect to the content of the
13 report?

14 MR. ABRAMOWICZ: No, your Honor.

15 THE COURT: Is the government applying to have
16 Mr. Lipkin credited with the third point for acceptance of
17 responsibility?

18 MR. ABRAMOWICZ: Yes, your Honor.

19 THE COURT: That application is granted and I note
20 that the third point is already incorporated into the
21 guidelines calculations in the presentence report.

22 Mr. Abramowicz or Mr. Monteleoni, would you please
23 summarize the provisions of the forfeiture order and explain
24 the basis of the money judgment computation.

25 MR. MONTELEONI: Yes, your Honor.

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1 Thank you.

2 The forfeiture order is a document which provides for
3 a \$170 billion money judgment as well as the forfeiture of
4 certain items of specific property and also the allocation of
5 other items of specific property to the bankruptcy trustee in
6 settlement of an adversary proceeding between the bankruptcy
7 trustee and certain of the Lipkins. So it is a somewhat
8 lengthier and more complex forfeiture order, but it is a global
9 settlement document. The basis for the money judgment
10 calculation is that it -- as the Court knows, Mr. Lipkin was
11 working at Madoff Securities for an especially long time. So
12 it is an estimate of the amount of cash additions into the
13 Madoff Securities investment advisory business from the point
14 at which the parties agreed for the purposes of forfeiture he
15 can be reasonably estimated to have been aware of the risk of
16 loss to investors.

17 THE COURT: Am I correct in understanding that there
18 are roughly deals with three groups of specific property?
19 There are assets that go to the trustee specifically, there are
20 assets that are forfeited, and there are certain assets that
21 are retained?

22 MR. MONTELEONI: Well not retained by the defendant.
23 Any property of any sort retained by the defendant would be
24 subject to forfeiture as a substitute asset until the entire
25 money judgment is satisfied.

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1 However, the defendant's wife does have an interest in
2 certain portions of the investment account that either arise
3 from inheritance money or from money that came into the account
4 before the defendant's criminal conduct essentially. So that's
5 the main basis for the property that's being retained by the
6 defendant's wife.

7 THE COURT: Thank you.

8 Mr. Galler, am I correct in understanding that the
9 defense has no objection to the form or substance of the
10 proposed consent order of forfeiture?

11 MR. GALLER: That's correct, your Honor. We
12 negotiated at length with counsel who is here, Mr. Monteleoni,
13 and also we had long discussions with BakerHostetler, and we
14 had an in-person meeting with counsel for Mr. Lipkin and the
15 children and Carol in Mr. Monteleoni's office. So we have no
16 objection.

17 THE COURT: Thank you.

18 Mr. Lipkin, have you signed the consent order of
19 forfeiture.

20 DEFENDANT LIPKIN: I'm sorry, your Honor?

21 THE COURT: Have you signed the consent order of
22 forfeiture that has been proposed to me? It is a 23-page
23 document dealing with the property and the liabilities that
24 Mr. Monteleoni has just discussed?

25 DEFENDANT LIPKIN: Yes, your Honor.

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1 THE COURT: Did you discuss it thoroughly with your
2 attorney before you signed it?

3 DEFENDANT LIPKIN: Yes, I did, your Honor.

4 THE COURT: Did you fully understand it before you
5 signed it?

6 DEFENDANT LIPKIN: Yes, your Honor.

7 THE COURT: Thank you.

8 I will enter the order in connection with this
9 proceeding after I impose sentence.

10 Before I hear the remarks of counsel and any downward
11 departure application I want to inform counsel that I am
12 considering including a mental health condition and am also
13 considering home confinement in connection with any potential
14 supervised release aspect of a sentence here. And so to the
15 extent there are any objections or comments specific to those
16 types of special conditions which were not among the special
17 conditions proposed by the probation department I'd be grateful
18 to hear that in connection with the remarks of counsel.

19 So, with that, Mr. Galler, whenever you're ready I'll
20 hear your sentencing remarks.

21 MR. GALLER: Thank you very much, your Honor.

22 Your Honor, I actually first met Mr. Lipkin at the
23 inception of this case, I think it's now 2008, six-and-a-half,
24 seven years ago. He came, and I must say, stunned that this
25 occurred. He was one of the first employees of the Madoff

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1 company. Very young man. His wife had worked there for a
2 short period of time. And he knew Mr. Madoff as a virtual king
3 of Wall Street, someone who was well respected, well liked in
4 the industry. And I'm sure your Honor knows far more than I
5 do, having sat through the long trial that you did last year.
6 Through the course of time Mr. Madoff asked my client to sign
7 certain documents which were certainly inappropriate. My
8 client knows now after review with counsel that the documents
9 he signed with the SEC were not accurate and you can't sign a
10 document and send it to the government that's not accurate.

11 THE COURT: Are you saying that Mr. Lipkin didn't know
12 that the documents were inaccurate when he signed them?

13 MR. GALLER: He didn't. He didn't know about the
14 greater fraud. In other words, he knew that the documents
15 weren't accurate because he never checked. So he certified to
16 certain statements to the SEC which he knew weren't accurate
17 because he didn't check, but he did not know about the greater
18 fraud of Mr. Madoff and didn't understand the underlying reason
19 of why Mr. Madoff wanted these documents signed.

20 So he's not making any excuses for his activities. He
21 knows he should have checked further and he knows he shouldn't
22 sign documents without further checking as to their accuracy.

23 So, he came to our office actually initially to file a
24 suit against Mr. Madoff and be involved in the trustee issue to
25 try to get some money back. And we investigated that aspect of

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1 it and then the other criminal aspects came later.

2 He certainly voluntarily entered a plea which goes
3 back to 2012. The government at that time understood that my
4 client's health was not good and that was in 2012. And I will
5 tell you that his health has deteriorated since then. He's
6 lost 50 to 75 pounds. He was relatively robust at the -- even
7 at the 2012 sentence. He does have haunch back. But all of
8 these other issues were more under control than they are now.
9 As you can see, he's a frail gentleman who had a pacemaker
10 replaced as recently as Friday and that has caused some
11 concern.

12 So I bring that up because if you look at the statute
13 under the Sentencing Guidelines 5H1.4, physical condition, it
14 does indicate that a downward departure may be appropriate when
15 someone who is in the condition of my client may not be able to
16 manage the rigors of incarceration. He not only has physical
17 infirmities but he's obviously frail and couldn't get around a
18 prison environment.

19 As your Honor knows --

20 THE COURT: There are of course medical facilities
21 maintained by the Bureau of Prisons and so as indicated in the
22 classification list that the government filed there are
23 facilities in which someone would not have to engage in all of
24 the normal physical activities involved in being in prison.

25 MR. GALLER: There are facilities that are -- I can

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1 only characterize them as not as good as the ones outside the
2 prison.

3 In addition, I can tell you this. He can get an
4 ambulance in five minutes from his house. There's a hospital
5 within a couple of miles of his house. That can't be
6 accomplished in prison. Those are just some of the
7 difficulties of the prison environment. It's just the nature
8 of the setup.

9 In order to present the court with information I had
10 Dr. Goldstein, who is a psychiatrist who teaches at Columbia,
11 present the court with a report because I wanted your Honor to
12 know what his status was. And clearly the doctor says that he
13 was a sad-looking elderly man who appears frail, infirm, and
14 older than his stated age and he believes that he suffers from
15 depression and needs psychiatric help in terms of long-term
16 psychiatric medication and help for his depression which, of
17 course, we know the onset of that, and he hasn't recovered from
18 it, and that includes being depressed over bringing his family
19 into this unfortunate situation. Your Honor sentenced Eric,
20 his son, and is well aware of that situation. But all of the
21 children worked at the firm summers and other times and
22 Mr. Lipkin was proud to bring his kids in to work, not knowing
23 about the greater fraud. I then sent my client to see
24 Dr. Charash, who teaches at NYU, and he explained the details
25 of the physical condition of my client. And I should note that

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1 the physical condition and mental condition of my client is
2 unopposed by the government. I don't think there's any issue
3 that they have regarding his condition. So the question
4 becomes what can we do with a gentleman in this state?

5 Well the presentence report is fairly clear. It
6 states that there is no chance of recidivism and that his frail
7 health would be further diminished if he is asked to navigate
8 the sometimes difficult path of obtaining consistent medical
9 care in a correctional facility.

10 So pretrial services are the people who have been to
11 my client's house. They understand the setting. They
12 understand that he does not leave the house except generally to
13 go to the doctor and walk around or go outside in the driveway
14 and come back home. So he's housebound. He has not been to my
15 office in quite some time. I have to go to his house,
16 including Saturday when I went over the forfeiture agreement, I
17 did meet him, I did meet his wife there. His wife is not here
18 today because of her prior stroke. She's just incapable of
19 dealing with this situation.

20 So, all in all, I think if you look at the medical
21 reports and the presentence report recommendation, I think
22 having him comply with psychiatric review, mental health exam
23 is appropriate -- well the exams have been done. He needs
24 mental health treatment.

25 THE COURT: That was what I meant by mental health

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1 condition.

2 MR. GALLER: Yes. And either we or the government can
3 make those arrangements. Certainly Dr. Goldstein can help in
4 that regard.

5 THE COURT: Although the probation department has
6 resources and I'm sure we'd consult with all of the resources.

7 MR. GALLER: And home confinement is reasonable under
8 the circumstances. I think the setting is safer for my client
9 and will cause less of a problem and less stress. So for all
10 of those reasons I would ask that the sentence be limited to
11 that and I thank you for your attention, your Honor.

12 THE COURT: Thank you, Mr. Galler.

13 Mr. Abramowicz.

14 MR. ABRAMOWICZ: Your Honor, I think there are two
15 central themes that came through from defense counsel's remarks
16 just now. These are also themes that emerge in the defense's
17 submission. Those themes are: One, the culpability of Bernard
18 Madoff; and two, the issues concerning Mr. Lipkin's health.
19 I'd like to talk about those in turn. Focusing first on
20 Bernard Madoff.

21 By now fifteen people have come in and either pled
22 guilty or been found guilty by a jury for their involvement in
23 this massive fraud and only one of those people was named
24 Bernard Madoff. And there is no dispute that Bernard Madoff
25 was the most culpable. He was the worst of the fifteen and he

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1 deserved the harshest punishment and he got it. I'm not here
2 asking the court to sentence Mr. Lipkin to 150 years in prison.
3 But there's a lesson from what we've seen over the years and
4 the lesson from this parade of guilty defendants is that
5 Bernard Madoff did not do this alone. He probably would have
6 wanted to do it alone. He could have kept more of the criminal
7 proceeds. He would have decreased the chances that someone
8 would talk and maybe he'd be found out. But he didn't do it
9 alone because he couldn't do it alone. He needed help and he
10 found it from people like Irwin Lipkin.

11 So I want to refocus us a little bit. Because we're
12 not here to talk about what Bernard Madoff did. We're here to
13 talk about what Irwin Lipkin did. I think defense counsel's
14 statements just now were not entirely consistent with the
15 statements we heard from Mr. Lipkin himself under oath when he
16 pled guilty. Those were statements about what he did and what
17 he knew he was doing.

18 So he said when he pled guilty that he, Mr. Lipkin,
19 was the comptroller at Madoff Securities. He was responsible
20 for preparing and maintaining certain financial books and
21 records. He falsified records to manipulate the firm's profit
22 and loss results. He altered the general ledger to mislead IRS
23 auditors and he certified that SEC filings were accurate even
24 when he knew, not failed to investigate, but knew that they
25 were not. And, yes, Mr. Lipkin did a lot of those acts under

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1 the direction of Bernard Madoff. But he didn't just follow
2 orders. Mr. Lipkin admitted in court, under oath, that he knew
3 what he was told to do was wrong, he knew it was illegal, and
4 he did it anyway. Not once. Not twice. But over a period of
5 decades. And beyond that Mr. Lipkin wasn't just being obedient
6 and following orders, because he was also being greedy.
7 Mr. Lipkin did very well for himself for a long time at Madoff
8 Securities. He was earning approximately \$225,000 a year and
9 he retired in 1998, which I think is inconsistent with the idea
10 put forth in the papers that he was merely a clerk.

11 Mr. Lipkin wasn't following orders when he told
12 someone to execute sham trades in his own investment accounts
13 and he was not just following orders when he arranged for
14 himself and for his wife to remain on the Madoff Securities
15 payroll so that they could receive benefits that they weren't
16 entitled to. So this wasn't just Bernard Madoff's crime. It
17 was also Irwin Lipkin's crime.

18 Let's talk about Irwin Lipkin's health. Defense
19 counsel is right that the government agrees that Mr. Lipkin is
20 in poor health. He is sick. And his physical condition does
21 qualify him for some departure from the ten-year stipulated
22 sentence. But departing all the way down from ten years to
23 zero is too drastic.

24 The medical reports that were in defense's submission
25 do establish his poor health but what they don't establish is

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1 that the Bureau of Prisons is incapable of caring for an inmate
2 in Mr. Lipkin's condition. Defense counsel talked about
3 Dr. Charash's report. That report says repeatedly that, again,
4 Mr. Lipkin is in poor health but its basic conclusion that it
5 repeats again and again is that he's at great risk of falling
6 and that he's at great risk of suffering severe injury from
7 such a fall. Your Honor, that's a risk that would exist
8 anywhere and there is no reason why that risk should be worse
9 in prison. Let's be clear the BOP does not just bus inmates to
10 the nearest prison that has an empty bed. It evaluates
11 inmates. It requests and reviews medical records of inmates
12 who are going to be designated to a facility and it designates
13 inmates accordingly.

14 Mr. Lipkin, understandably, wants to keep seeing the
15 doctors he knows. He understandably wants to be in the comfort
16 of his own home instead of in a facility chosen by the Bureau
17 of Prisons. But people convicted of serious crimes lose
18 certain liberties and those liberties include the liberty to
19 choose their preferred medical providers.

20 Your Honor, we don't relish coming here to ask you to
21 send a 77-year-old man in Mr. Lipkin's condition to prison.
22 And we don't relish asking you to separate him from his wife
23 who we understand is in poor health, just as we don't relish in
24 many other cases asking courts to sentence defendants who have
25 young children to prison. But, it's important to remember that

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1 Mr. Lipkin is older than many defendants largely because he was
2 so successful at his crimes. He got away with this for
3 decades. So did others. And as a result he enjoyed his
4 younger years largely at the expense of others and he shouldn't
5 be rewarded for that by being allowed to remain free during his
6 older years.

7 Defense counsel mentioned reducing the risk of
8 recidivism. We agree. There is very little to no risk in our
9 view that Mr. Lipkin is going to repeat these offenses or that
10 he'll even have an opportunity to repeat these offenses. But
11 there are other considerations, including the nature and
12 seriousness of the offense, which speaks for itself, and also
13 the need for general deterrence. And there needs to be a
14 message to people who have dug themselves into a hole from
15 criminal conduct, that they can't just keep digging and keep
16 digging and hope that they can dig long enough to reach old age
17 and just come out free on the other side.

18 So, your Honor, for those reasons and the reasons in
19 our papers we respectfully request that the court sentence
20 Mr. Lipkin to a term of imprisonment, not a term ten years, but
21 some term of imprisonment. Thank you.

22 THE COURT: Thank you.

23 Mr. Lipkin, would you like to speak on your own behalf
24 before I decide your sentence?

25 DEFENDANT LIPKIN: Yes, your Honor. I was the first

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1 person basically who went to work for Mr. Madoff. He had two
2 sons and a brother who he told me pointblank they are my future
3 as far as he was concerned. The fact that Mr. Madoff was well
4 liked and loved on the street, on Wall Street, led me to
5 believe that everything that he had me doing was absolutely on
6 the up and up. I had no reason to believe otherwise,
7 considering the fact that smarter people than myself were taken
8 in by him, including Congress who he had went up to face at
9 some point in time.

10 During the summer months I had my children coming in
11 to work there. And, as you know, Eric eventually went to work
12 in the office himself. If I had known what I know now I would
13 have never done these things to my family. My family means
14 more to me than anything else in this entire world. On top of
15 everything else, if I was so smart and knew everything, why
16 would I have given my own money to this man who wound up being
17 the biggest thief on Wall Street? This to me made absolutely
18 no sense.

19 Insofar as everything else, I would like to apologize
20 to the court and to your Honor and to everybody else who may
21 have been hurt by things that I had done.

22 I would also like to apologize to my own family, my
23 wife, and my three sons for what I had caused them during this
24 period of time.

25 My health has gone down tremendously since this whole

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1 thing has taken place and I don't know how I can even explain
2 this to my wife who bears no hardship in the sense that she is
3 not a well woman. She has very difficult days. And it's --
4 I'm very thankful right now for the fact that my son Mark, who
5 lives with us, is able to take care of my wife and myself.

6 I would really love to turn the clock back but there
7 is nothing that I can do. There is nothing that I can really
8 say anymore since I've just heard it all. That's the whole
9 thing in a nutshell.

10 Your Honor, I'd like to thank you for caring and
11 sending information to me pertaining to my health so I really
12 would like to thank you personally for that.

13 Other than that I have nothing else I can really say.

14 This gentleman spoke. I know how he feels and there's
15 nothing I can do to change his mind. I can only hope that
16 possibly you can have sympathy for my wife and my family and
17 myself and that's all I can really say. So I really thank you
18 again for your time and, again, I apologize to you and the
19 court.

20 THE COURT: Thank you, Mr. Lipkin.

21 I do have a question for you, because I am a little
22 bit puzzled by part of your statement when you talk about what
23 you did at Madoff Securities. You admitted in your plea
24 allocution you changed figures that you had knowingly put false
25 figures into the reports. Did you knowingly change figures on

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1 the books of Madoff Securities?

2 DEFENDANT LIPKIN: To my recollection at this point in
3 time which is going back 17, 18 years, I honestly and truly
4 cannot remember in doing all of those kind of things that I
5 have been accused of doing.

6 THE COURT: Mr. Galler, do you wish to speak with
7 Mr. Lipkin at all?

8 MR. GALLER: Just give me one moment.

9 (Pause)

10 MR. GALLER: Your Honor, I just want to make it clear
11 and maybe I can ask my client a couple of questions to make it
12 more clear to the court.

13 Mr. Lipkin, you're not denying any of the allegations
14 that are in the plea agreement, correct?

15 DEFENDANT LIPKIN: Correct.

16 MR. GALLER: And that was done in 2012 with counsel at
17 the time was Mr. Richman, correct?

18 DEFENDANT LIPKIN: Correct.

19 MR. GALLER: And you met with Mr. Richman many times,
20 correct?

21 DEFENDANT LIPKIN: Yes, sir.

22 MR. GALLER: And you understood that you tried to have
23 trades backdated and signed documents that were not accurate,
24 correct?

25 DEFENDANT LIPKIN: Yes.

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1 MR. GALLER: You may not remember the specific ones at
2 this time because of the length of time but you understand that
3 there's nothing that you would argue that is accurate in the
4 November 5, 2012 plea letter, correct?

5 DEFENDANT LIPKIN: Correct.

6 THE COURT: You argue that it's not accurate.

7 MR. GALLER: Right.

8 Everything in there to your knowledge is accurate,
9 correct?

10 DEFENDANT LIPKIN: Correct.

11 MR. GALLER: I have nothing further, your Honor.

12 THE COURT: Did you tell me the truth about your own
13 conduct, Mr. Lipkin, when you pled guilty under oath before me
14 in 2012?

15 DEFENDANT LIPKIN: Yes, your Honor.

16 THE COURT: Thank you. I am going to ask that
17 everyone sit quietly for just a few minutes while I reflect on
18 what I've heard and make my decision regarding the sentence
19 which I will then explain and announce.

20 (Pause)

21 Thank you for your patience.

22 I adopt the factual recitation that is set forth in
23 the presentence report and I further find that Mr. Lipkin
24 suffers from the physical ailments and infirmities and mental
25 health issues detailed in the reports of Doctors Goldstein and

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1 Charash.

2 As the Supreme Court has explained in the Booker
3 opinion, this Court has discretion, taking into account the
4 applicable statutory provisions, in exercising its power under
5 Section 3553(a) of Title 18, to determine the particular
6 sentence to be imposed in each particular case. That statute
7 requires the court to consider a number of specific factors and
8 sentencing goals which include the nature and circumstances of
9 the offense, the defendant's history and characteristics, the
10 need for the sentence imposed to reflect the seriousness of the
11 offense, promote respect for the law, and provide just
12 punishment, deterrence, protection of the public, and provision
13 of needed medical care or other correctional treatment to the
14 defendant in the most effective manner. The Court must also
15 consider the types of sentences available and the applicable
16 sentencing guidelines provisions, among other factors. The
17 Court is required to impose a sentence that is sufficient but
18 not greater than necessary to comply with the statutory
19 sentencing purposes.

20 With respect to the Sentencing Guidelines, I conclude
21 that the applicable guideline offense level is 43 and that the
22 applicable Criminal History Category is I for the reasons that
23 are detailed in the presentence report.

24 I adopt the grouping of charges analysis that is set
25 forth in the presentence report.

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1 Accordingly, the advisory guideline custodial sentence
2 is life imprisonment capped by the combined statutory maximum
3 penalty of ten years, which is also the parties' stipulated
4 guidelines sentence.

5 I have used the November 1, 2014 edition of the
6 Sentencing Guidelines manual in making these determinations.

7 Section 5H1.4 of the guidelines manual contains a
8 policy statement relevant to the Court's determination of
9 whether a defendant's physical condition warrants a departure
10 from the guideline sentence. That section provides that
11 defendant's physical condition may be relevant in determining
12 whether a departure is warranted if the condition is
13 individually or in combination with other offender
14 characteristics, present to an unusual degree, and
15 distinguishes the case from the typical cases covered by the
16 guidelines, and goes on to state that such an extraordinary
17 physical impairment may be a reason to depart downward and the
18 defendant has the burden of showing that his situation is
19 outside of the heartland of the applicable guidelines.

20 Here, the representations in Mr. Lipkin's submission,
21 particularly the reports, whose findings I have adopted,
22 demonstrate that Mr. Lipkin is frail and is in exceedingly poor
23 health. The documents detail the array of issues that
24 Mr. Lipkin faces including cardiac and coronary artery related
25 problems, issues arising from medication complications,

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1 musculoskeletal problems. As has been mentioned, he wears a
2 pacemaker and there are balance, ambulation and falling risk
3 issues. He has also been diagnosed with mental health
4 disorders.

5 The guidelines note that in the case of the seriously
6 infirmed defendant home detention may be as efficient as and
7 less costly than imprisonment.

8 The Court finds that the medical evidence that has
9 been presented demonstrates that Mr. Lipkin's situation is
10 outside of the heartland of the applicable guidelines and that
11 in light of the scope and severity of Mr. Lipkin's condition a
12 substantial downward departure from the stipulated guideline
13 sentence of ten years is appropriate.

14 I have gone on to consider the full range of statutory
15 sentencing factors and goals under Section 3553 as well as all
16 of the information that has been put before me in light of
17 those factors and goals, both the information that was
18 submitted in writing prior to the sentencing and everything
19 that has been said here today in court. And I also note and
20 take into consideration the fact that Mr. Lipkin has been under
21 pretrial supervision conditions since late November of 2012.

22 I will speak relatively briefly to certain of the
23 factors.

24 As to the nature and circumstances of the offense. As
25 Mr. Lipkin and his counsel have stated, Mr. Lipkin joined

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1 Madoff Securities now more than 50 years ago as one of its very
2 first employees and stayed there until he retired in 1998. He
3 served as comptroller during that period of time, and in his
4 capacity as comptroller he, for decades, falsified the books
5 and records of Madoff Securities, along with other employees
6 who also participated in that falsification. And all of this
7 activity was done at the direction of Mr. Madoff. But it was
8 done knowingly. That included the preparation and filing of
9 false reports to the Securities and Exchange Commission.

10 Mr. Lipkin has acknowledged in his plea allocution,
11 which he reaffirmed today was the truth, that he knew that the
12 financial information contained within those reports was false
13 because he and others had altered that information. He also
14 engaged in the falsification of information in aid of
15 Mr. Madoff's personal tax fraud. He also engaged in
16 manipulation of books and records in aid of his own personal
17 financial situation, including requesting specific tax-related
18 losses to be shown in the accounting for his investment
19 accounts at Madoff Securities. Fake trades were entered in
20 order to achieve those reported losses. He also arranged for
21 his wife to be placed on the company payroll and for himself to
22 remain on the payroll after he retired in order to collect
23 benefits to which they were not entitled. And false documents
24 were created and filed with the Department of Labor in aid of
25 that crime, that falsification of employee status.

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1 The Court does recognize and acknowledges that there
2 is no indication that Mr. Lipkin knew that the investment
3 advisory portion of the Madoff Securities business was a Ponzi
4 scheme. He was not privy to the scope of the client-related
5 fraud but he did knowingly take part in material ongoing
6 massive manipulations of the books and records of that company
7 that were crucial to the perpetration and maintenance of that
8 fraud.

9 Mr. Lipkin is a college graduate and joined Madoff
10 Securities shortly after he graduated from college.

11 Further to his personal characteristics, the letters
12 that I have received from the members of his family show him to
13 be a dedicated family man, one who devoted himself to fathering
14 not only his own children but also nephews and one who did
15 bring his relatives into Madoff Securities thinking that that
16 was a good thing to do. It is also clear that he did trust
17 Mr. Madoff and he and he family suffered both financial losses
18 and loss of the emotional foundation and confidence in their
19 own integrity and the integrity of his work that was the
20 necessary consequence of the revelation of the Madoff
21 Securities fraud.

22 Mr. Lipkin has expressed remorse here in court and
23 also in his letter to the court, but he minimizes the
24 wrongfulness of his conduct or his recollection of that conduct
25 and the contribution, albeit unwitting, of that conduct to the

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1 massive destruction of lives that was caused by the Madoff
2 Securities fraud.

3 Mr. Lipkin does suffer from a range of very serious
4 health conditions and his health has been deteriorating in
5 recent years. He is fragile and he has compromised ambulation
6 and cognitive abilities. He also shares caregiving
7 responsibilities for Mrs. Lipkin who is also in poor health.

8 The Court recognizes that Mr. Lipkin has already faced
9 significant repercussions as a result of his serious criminal
10 behavior. He and his family have suffered under the weight of
11 the judgment of the general public and they have lost
12 substantial assets. Mr. Lipkin is subject to a very
13 substantial I will say forfeiture obligation. And there is no
14 question that he will continue to suffer from social isolation
15 and guilt resulting from the stain of his association and that
16 of his family with Mr. Madoff and Madoff Securities.

17 A lengthy custodial term would, absent Mr. Lipkin's
18 serious health problems and deterioration risks, be appropriate
19 to address the sentencing considerations of punishment, public
20 deterrence and promotion of respect for the law. The Court
21 has, however, granted the defense motion for a downward
22 departure pursuant to section 5H1.4 of the guidelines and finds
23 that, in light of Mr. Lipkin's age, his extraordinarily poor
24 health and need for frequent specialized medical attention,
25 that a very substantial departure from the guideline sentence

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1 to a sentence that includes supervised release with restrictive
2 special conditions is appropriate here and necessary to achieve
3 a sentence that is sufficient but not greater than necessary to
4 address the statutory purposes of sentencing.

5 I have considered the full range of Section 3553(a)
6 factors in determining the appropriate sentence.

7 I will now state the sentence that I intend to impose.

8 Mr. Lipkin, it is the judgment of this Court that you
9 are to be sentenced to six months of imprisonment on each of
10 your two counts of conviction, to be followed by three years of
11 supervised release with special conditions including 18 months
12 of home detention. The custodial terms will run concurrently
13 for a total of six months of imprisonment and then be followed
14 by concurrent terms of supervised release for a total of three
15 years of supervised release, 18 of which will be spent in home
16 detention.

17 The standard conditions of supervision one through
18 fifteen as detailed in the Sentencing Guidelines Manual will
19 apply.

20 You will also be subject to the following mandatory
21 conditions.

22 You must not commit another federal, state, or local
23 crime.

24 You must not illegally possess a controlled substance.

25 You must not possess a firearm or destructive device.

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1 I will suspend the normal mandatory drug testing
2 condition based on the probation office's determination, which
3 I adopt, that you pose a low risk of future substance abuse.

4 You must cooperate in the collection of DNA as
5 directed by the authorities.

6 You must also meet the following special conditions.

7 You must provide the probation officer with access to
8 any requested financial information.

9 You must not incur new credit charges or open
10 additional lines of credit without the approval of the
11 probation officer.

12 You must participate in a mental health program
13 approved by the United States probation office.

14 You must continue to take any prescribed medications
15 unless otherwise instructed by the healthcare provider.

16 And you must contribute to the costs of the services
17 rendered that are not covered by third party payment if you
18 have the ability to pay.

19 The Court authorizes the release of available
20 psychological and psychiatric evaluations and reports to the
21 healthcare provider.

22 You must comply with the conditions of home detention
23 for a period of 18 months. During this time you must remain at
24 your place of residence except for medical appointments and
25 other activities approved by your probation officer.

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1 You must maintain a telephone at your place of
2 residence that does not have call forwarding, a modem, caller
3 ID, call waiting or portable cordless telephones for this
4 period of time.

5 At the direction of your probation officer you must
6 wear an electronic monitoring device and follow electronic
7 monitoring procedures specified by your probation officer.

8 The home detention will commence on a date to be
9 determined by the probation officer and you must pay the costs
10 of home detention on a self-payment or copayment basis as
11 directed by the probation officer and in light of your
12 financial circumstances.

13 You must report to the nearest probation office within
14 72 hours of release from custody and you will be supervised by
15 your district of residence.

16 I will not impose a restitution obligation for the
17 reasons set forth in the order that I entered in this case on
18 January 22, 2013.

19 I will order you, consistent with the terms of the
20 consent preliminary order of forfeiture, to forfeit to the
21 United States \$170 billion in respect of your convictions on
22 Counts One and Two representing the proceeds received directly
23 or indirectly from those crimes.

24 You must also forfeit to the United States all right,
25 title, and interest in the specific property identified for

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1 forfeited in the consent preliminary order of forfeiture.

2 Your forfeiture obligation will be joint and several
3 with those of Daniel Bonventre, Annette Bongiorno, JoAnn Crupi,
4 George Perez, Jerome O'Hara, Eric S. Lipkin, David Kugel,
5 Enrica Cotellessa-Pitz, Craig Kugel, Peter Madoff and Paul J.
6 Konigsberg -- actually Mr. Konigsberg's forfeiture obligation
7 isn't joint and several, is it?

8 MR. MONTELEONI: Your Honor, I believe it was joint
9 and several but in an amount that it was satisfied. So, yes, I
10 think that it is.

11 THE COURT: He's properly included?

12 MR. MONTELEONI: Yes.

13 THE COURT: I'm sorry. I thought it had a different
14 calculation basis.

15 Paul J. Konigsberg, all in this case, which is
16 10 CR 228; that of Bernard Madoff in 9 CR 213-01; that of David
17 Friehling in 09 CR 700; and any of Frank DiPascali in
18 09 CR 764.

19 I will order that you pay to the United States the
20 mandatory special assessment of \$200 which is \$100 for each of
21 the counts of conviction and that is due immediately.

22 In light of your forfeiture obligation I will not
23 impose any fine on you.

24 I will recommend to the Bureau of Prisons that you be
25 designated to a medical facility or to home confinement which

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1 is a designation that is within the power of the Bureau of
2 Prisons.

3 If the Bureau of Prisons designates you to home
4 confinement to serve the six-month sentence, that six months of
5 home confinement will be in addition to the 18 months of home
6 confinement that I have imposed as a condition of supervised
7 release.

8 I believe that this sentence is reasonable within the
9 meaning of the law, sufficient, appropriate, and no greater
10 than necessary to satisfy the statutory purposes of sentencing
11 which include punishment and deterrence.

12 Counsel, does either of you know of any legal reason
13 why the sentence should not be imposed as stated?

14 MR. ABRAMOWICZ: No, your Honor.

15 MR. GALLER: No, your Honor.

16 THE COURT: The sentence as stated is imposed.

17 Mr. Galler, are there further recommendations that you
18 would ask that I make to the Bureau of Prisons?

19 MR. GALLER: I would like to investigate their current
20 status. I know they have a hospital in Kansas City. I just
21 don't know where their best medical facility is. My experience
22 with someone in his condition in most of the prisons is not
23 good. So I would need a little bit of time just to investigate
24 what the best medical facility would be. That would have to be
25 in a near hospital setting because the normal nurse's station

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1 and medical facility in most of the prisons is not adequate.

2 THE COURT: As I said, I am going to specifically
3 recommend designation to a medical facility as distinguished
4 from a regular prison facility and what I suggest is that you
5 get in touch right away with the designation office of the
6 Bureau of Prisons, provide to the designation office copies of
7 the reports of Doctors Goldstein and Charash so that they can
8 prepare and evaluate appropriately, and they will have the
9 judgment and commitment form that I signed, but also feel free
10 to tell them that I recommended medical facility or home
11 confinement if in their view that is a more appropriate
12 designation.

13 Mr. Lipkin, I must say something important to you
14 about appeal rights. To the extent that you have not given up
15 your right to appeal through your guilty plea, you have the
16 right to appeal this sentence. If you are unable to pay the
17 costs of an appeal, you may apply for leave to appeal in forma
18 pauperis. At your request the clerk of court will file a
19 notice of appeal for you. Any notice of appeal must be filed
20 within 14 days of the judgment of conviction.

21 I am going to permit time for the evaluation and
22 designation process and so I will direct that Mr. Lipkin report
23 to the designated institution by 2:00 on October 22, 2015. So
24 that leaves almost three months for the necessary
25 communications and evaluations.

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1 Mr. Abramowicz, are there any remaining counts or
2 underlying indictments that need to be addressed?

3 MR. ABRAMOWICZ: Your Honor, the government moves to
4 dismiss any and all underlying counts pertaining to Mr. Lipkin.

5 THE COURT: That motion is granted.

6 Mr. Lipkin, the crimes in which you've participated
7 were serious and you are paying a very heavy price. In the
8 interruption of your life and your expectations of a quiet
9 retirement, you have much in common with the thousands of
10 victims of the Madoff Securities fraud. Given your fragile
11 physical condition and your recognition to a significant degree
12 of the wrongfulness of your conduct, the court has concluded
13 that a short period of imprisonment or other custody as
14 directed by the Bureau of Prisons, followed by home confinement
15 is the just and appropriate result here. You have demonstrated
16 contrition and the letters that I have received about you
17 demonstrate that you are much loved and also relied upon by
18 your family. And this sentence gives you the opportunity to
19 continue to be a positive force in the lives of others,
20 especially your wife who depends so greatly on you, and I wish
21 you and your family continued strength and courage. And I
22 thank you for listening.

23 I thank counsel for their work and their advocacy in
24 connection with this case.

25 I will direct that a copy of the presentence report be

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1 prepared for the Bureau of Prisons and the Sentencing
2 Commission. All other copies of the report must remain
3 appropriately confidential. If an appeal is taken, counsel on
4 appeal are permitted access to the report.

5 Counsel, is there anything else that we should take up
6 together this afternoon?

7 MR. ABRAMOWICZ: No, your Honor.

8 MR. GALLER: Just so we're clear, he doesn't report to
9 probation right away? I should contact the Bureau of Prisons
10 and then they will interview him and review the records?

11 THE COURT: He does need to report to probation within
12 the next day or two. Ms. Ng is going to be e-mailing a report
13 of the sentence to the probation department and that is where
14 the paperwork is commenced. And so it would be a good idea for
15 you to just touch base and coordinate with probation as to
16 communications within Bureau of Prisons. My impression is that
17 it's the designation office that you'll principally be dealing
18 with for the Bureau of Prisons but the initial contact has to
19 be with probation.

20 Ms. Ng, are you also going to be giving a printout of
21 that e-mail?

22 THE DEPUTY CLERK: Yes.

23 THE COURT: So Ms. Ng will also give a physical copy
24 of the e-mail. And the probation department is still at 233
25 Broadway, correct, Ms. Ng?

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1 THE DEPUTY CLERK: Yes.

2 THE COURT: They're in the process of moving?

3 THE DEPUTY CLERK: They're in the process of moving.

4 THE COURT: We haven't been informed that they're
5 here. Before everybody leaves the courtroom, Ms. Ng, maybe you
6 could just call probation and check to make sure of the right
7 place to report because we certainly wouldn't want to --

8 MR. GALLER: Because of his circumstances. It's a few
9 blocks away. It's just hard for us to get him there today.

10 THE COURT: Yes. So Ms. Ng will you just check as to
11 what the appropriate course of action is.

12 MR. GALLER: Thank you, Judge.

13 THE COURT: Thank you all.

14 Be well. We're adjourned.

15 (Adjourned)

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